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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,521	09/30/2003	Loring Pickering		6104
7590	09/27/2004		EXAMINER	
LORING PICKERING 598 PARK BLVD UKIAH, CA 95482			LEGESSE, NINI F	
		ART UNIT	PAPER NUMBER	
			3711	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/675,521	PICKERING ET AL.
	Examiner Nini F. Legesse	Art Unit 3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 July 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Applicant's response to the Office Action of 03/09/04 is acknowledged on 07/16/04.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

- In claim 4, it is not clear if Applicant is intending to claim the golf ball. On lines 9+ it is stated that the head is to have a concave hemispheric scoop sized to removably retain a golf ball and then the structure of the golf ball is stated. It is not clear if the ball and its structure is to be claimed because the specification does not disclosed the claimed "soft flexible foamed plastic material" for the ball.

**For purpose of examination examiner has assumed that the ball is not to be claimed.**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Costello (US Patent No. 2,094,766) or Christle (US Patent No. 3,046,044).**  
Costello discloses a game appliance comprising:

- A handle portion (1);
- An elongate shaft portion (see Fig. 1);
- A head portion (2);
- Wherein said head portion (2) is shaped like a concave hemispheric scoop forming a pocket (12);

Christle discloses a golf ball retrieving device comprising:

- A handle portion (see Fig. 1);
- An elongate shaft portion (13,14,15);
- A head portion (10); and
- Wherein said head portion (10) is shaped like a concave hemispheric scoop forming a pocket (See Figs. 1-3).

**Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Oblack (US Patent No. 6,076,829)**

Oblack discloses a golf club comprising:

- A handle portion (12);
- An elongate shaft portion (8);
- A head portion (20);

- Wherein said head portion (20) is shaped like a concave hemispheric scoop forming a pocket (see Figs. 1-6; and
- A shaft portion that is bowed and is constructed of a semi rigid material that can flex (see column 2, lines 12-14).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Christle in view of Hsieh (US Patent No. 5,976,030) or Richard (US Patent No. 6,679,785). Christle discloses the invention as recited above but fails to show internal threads on the handle portion and external thread on the shaft section. Both Hsieh and Richard disclose internal threads on the handle portion and external thread on the shaft section (With respect to Hsieh refer to item 21 for the threaded rod body that is fixed to the golf shaft and screw hole (11) that is part of handle/grip (1). With respect to Richard, refer to column 1, lines 58-61) it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Christle with threaded elements as taught by Hsieh or Richard in order to provide an adjustable device.

***Response to Arguments***

Applicant's arguments filed 07/16/04 have been fully considered but they are not persuasive.

Applicant argues that the Christle reference is dealing with a golf ball retrieving apparatus that has a complicated linkage arrangement while the present invention deals with a game. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). In this case, Applicant's claims do not restrict the presence of a linkage arrangement and Christle clearly meets all the stated limitations of the claims and Christle's device is capable of being used as a golf-training device.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vidovich Greg can be reached on (703) 308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NFL

09/23/04

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700